

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD  
OF THE STATE OF CALIFORNIA**

**AB-7612a**

File: 21-324096 Reg: 99047384

SALAM S. KALASHO, dba Pine Palace Liquor  
11 Third Avenue, Extension, Suite C, Chula Vista, CA 91910,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: August 15, 2002  
Los Angeles, CA

**ISSUED SEPTEMBER 16, 2002**

Salam S. Kalasho, doing business as Pine Palace Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> after remand which suspended his license for 15 days for his clerk selling an alcoholic beverage to a minor decoy, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, section 22, arising from a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Salam S. Kalasho, appearing through his counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

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<sup>1</sup>The decision of the Department, dated September 6, 2001, is set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Board reversed the decision of the Department on the issue of discovery. The Board concluded that appellant was entitled to discovery of the identities of any other licensees who themselves, or through their employees, had on the same night made sales of alcoholic beverages to the decoy who made the purchase in this case, and ordered the case remanded to the Department for further proceedings consistent with its order.

The Department, accordingly, remanded the matter to the Administrative Law Judge to take evidence and argument, through affidavit and briefing only, regarding what new evidence the licensee intended to offer at any further hearing. Thereafter, the ALJ was to "hold any further proceedings as he determines are necessary and appropriate, in his exclusive discretion."

The ALJ directed the Department to provide to appellant the discovery ordered by the Appeals Board. The Department identified one other licensee who sold alcoholic beverages to the same decoy on the same night that appellant's clerk did.

Appellant filed an offer of proof requesting further proceedings and the Department filed a reply. The ALJ's decision, adopted by the Department, found appellant's offer of proof inadequate because it "fails to establish the actual existence of any new and relevant evidence to support his request for further proceedings and there is no new evidence for the Administrative Law Judge to consider. Furthermore, the [appellant] did have an opportunity to conduct a full and fair cross-examination of both the decoy and the police officer." The decision concluded that no further proceedings were appropriate or necessary and again ordered the license suspended for 15 days.

Appellant filed a timely appeal from the Department's decision in which he argues that the Department violated the Order of the Appeals Board by first requiring, and then rejecting, his offer of proof and, in doing so, denied appellant his right to cross examination.

### DISCUSSION

This is one of a number of similar appeals arising from decoy operations where, after the Appeals Board ordered the disclosure of the identities of other licensees charged with selling to that same decoy, the Department reaffirmed its original order after finding that the licensee's offer of proof did not warrant further proceedings.

In several of the subsequent appeals, it appeared from the record that the licensee in question had already, through its counsel, possessed the identities of the other licensees to whom sales were made. Therefore, the Board did not address the question of the adequacy of the offer of proof. Instead, it concluded that the licensees in those cases had not suffered any prejudice from not having obtained the discovery permitted by the Board until after the administrative hearing.

In this case, there is nothing in the record indicating that appellant possessed such information, either directly or through his counsel. Consequently, we must address the issue posed by appellant, i.e., that the Department abused its discretion by ordering appellant to file an offer of proof, and after he had done so, finding the offer insufficient to justify further proceedings.

It is appellant's position that his ability to cross-examine the decoy and the police officer accompanying the decoy was impaired by the lack of such information. We can understand how it may have been. We know from the many appeals we have heard arising from decoy operations that it is often the case that the decoy will visit a large

number of premises in the course of an operation. Appellant contends that, at times, the decoy will confuse events which occurred in one location with what took place at another, and that cross-examination is the only way to ferret out such possible confusion.

It seems to us that requiring an appellant to identify specific elements of proof, as the Department required, places too great a burden on appellant. Cross-examination seeks testimony which will reduce the persuasive value of the witness's direct testimony, and does not readily lend itself to preliminary delineation to the extent the Department has required.

When the Board concluded that licensees were entitled to discover the identities of other sellers to the decoy in question, it was because it was persuaded that those licensees had not been given an opportunity to conduct a full and complete cross-examination of the Department's witnesses. We are still of that view. Consequently, we believe the only way that full effect can be given to our earlier ruling on discovery is to order this case remanded to the Department to permit appellant the opportunity to cross-examine the witnesses against him armed with the information obtained through discovery.

We are not unaware of the possible difficulties the Department may encounter in presenting its witnesses for further cross-examination, or even its inability to do so, as a result of the passage of time while these appeals were pending. However, had the Department not been so adamant in its refusal to provide discovery until required to do so by this Board, and only then after futile attempts to overturn the Board's discovery decisions, this case might have been concluded long ago.

ORDER

The decision of the Department is reversed and the case is remanded to the Department for such further proceedings as may be necessary in light of our comments herein.<sup>2</sup>

TED HUNT, CHAIRMAN  
E. LYNN BROWN, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup> This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.